



May 14, 1999

Mr. Robert L. Kane
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR99-1333

Dear Mr. Kane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124128.

The University of Texas at San Antonio (UTSA) received a request for information related to complaints made by persons associated with UTSA's athletic program. You have supplied three letters which you contend are responsive to this request.¹ You argue that information contained in one of these letters is excepted from disclosure by section 552.101 of the Government Code, in conjunction with common-law rights of privacy. We have considered the exception you claim and have reviewed the document at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The courts have held that information is made confidential by common-law privacy, if and only if: 1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that

¹We note that the supplied information does not encompass the breadth of the request. We assume that you have released all responsive information that you have not provided to this office for review as well as the two letters supplied as examples of released documents.

relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also*, Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common-law privacy), 422 (1984) (concluding that details of self-inflicted injuries are presumed protected by common-law privacy) 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy).

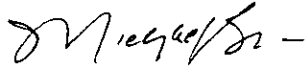
As regards the privacy interest implicated by the assertions of the subject letter, this office has previously held that a common-law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. *See* Open Records Decision Nos. 438 (1986), 219 (1978), 230 (1979). Further, you contend that release of the allegations constitutes an "invasion of privacy," as their truth or falsity cannot be proven. However, "false light" invasion of privacy was expressly disavowed by our office as a grounds for excepting information from public disclosure as confidential. Open Records Decision No. 579 (1990). Our office held that "[t]he gravamen of a false light privacy complaint is not that the information revealed is confidential, by that it is false. Therefore, an exception [to disclosure] focused on the confidentiality of information does not embrace this particular tort doctrine." *Id.* We conclude that release of the information does not implicate protected common-law privacy interest of the subject public employee. We have marked the information to indicate that which implicates the protected privacy interests of others.

The submitted document contains information that may be excepted from public disclosure by section 552.117 of the Government Code. This section excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, and personal family members information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). We have marked the information that may be subject to Government Code section 552.117.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Jay Burns", followed by a horizontal line.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 124128

encl. Marked documents

cc: Mr. Russell Gold
San Antonio Express-News
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San Antonio, Texas 78297-2171
(w/o enclosures)